HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1047 OF 2005

JUDGMENT:

The instant appeal is preferred by the claimant dissatisfied with the award of Rs.30,000/- granted by the order dated 22.02.2005 in O.P.No.451 of 1998 on the file of Chairman, Motor Accidents Claims Tribunal(District Judge) at Nizamabad, against the claim of Rs.1,50,000/-, laid under Section 166 of the Motor Vehicles Act, 1988.

2. The appellant herein is the claimant and respondent Nos.1 and 2, who are owner and insurer respectively, of the lorry bearing No.MHQ-2827 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts in brief are that on 10.11.1997 at about 6.00 p.m., while the petitioner was passing through on the extreme left side of road near Sri Venkateswara Talkies, Bodhan, the driver of the lorry bearing No.MHQ 2827, since driven the same in a rash and negligent manner, dashed him, due to which he sustained fracture injuries to his left leg tibia and injuries on the right knee, left foot, multiple and grievous injuries on other parts of his body. Immediately, he was shifted to Government Civil Hospital, Bodhan and later he was referred to Government Headquarters Hospital, Nizamabad and treated by duty medical officers. He claimed that he was still taking treatment on the date of filing the claim petition. He states that he spent Rs.60,000/- towards his

treatment, therefore, he claimed Rs.1,50,000/- against respondents 1 and 2 being owner and insurer of the crime lorry. It appears, subsequently the third respondent National Insurance Company Limited was impleaded as per orders in I.A.No.473 of 2002 dated 04.04.2003 as necessary party. The endorsement to that effect was made in the cause title of the order under challenge.

5. The first respondent remained exparte. Second respondent opposed the claim petition by filing written statement. It is specifically contended that there was a delay of 27 days in reporting the matter to the police. It is also specifically contended that as per the stand taken by the petitioner, the policy was valid from 29.11.1997 to 28.11.1998, the accident took place on 10.11.1997. Therefore, the policy was not in force as on the date of accident. Hence, the insurance company cannot be made liable to compensate the petitioner by way of indemnifying the first respondent. This has been the resistance offered by the second respondent, perhaps the third respondent must have been the insurer on the date of accident. The third respondent was subsequently impleaded as mentioned above.

6. In order to decide the controversy, the Tribunal framed the following issues:

1. "Whether the accident was due to rash and negligent driving of the vehicle bearing No.MHG-2827 by its driver?
2. Whether the petitioner is entitled for compensation? If so to what amount and from which of the respondents?
3. To what relief?"

7. During enquiry, the petitioner himself examined as P.W.1 and also examined Dr.K.Laxminarayana as P.W.2 and marked Exs.A1 to A6 besides marking Ex.B1 copy of insurance policy.

8. On issue No.1 and additional issue No.1, which was framed

subsequently when the third respondent being added as party in view of the additional written statement filed by the second respondent, the Tribunal while dismissing the claim against the second respondent company based on Ex.B1 copy of policy held that the claim can be maintained against respondents 1 and 3 besides observing that due to rash and negligent driving of the lorry driver, the accident had occurred.

9. On issue Nos.2, 3 and additional issue No.2, the Tribunal based on Ex.A3 wound certificate held that there was a fracture of left tibia and abrasion on the right knee 5" x 2" and another abrasion on the left foot 9 x 2 cms., and the first injury being grievous in nature, granted a sum of Rs.25,000/- towards disability and Rs.5,000/- towards pain and suffering, and thus, a total amount of Rs.30,000/- was granted by excluding the disability certificate and the evidence of P.W.2 to that extent with interest at 9% per annum.

10. Dissatisfied with the said order which is under challenge, the instant appeal was filed on the ground that the Tribunal granted meagre compensation contending that the Tribunal ought to have taken into consideration the grievous injuries suffered by the appellant and fracture to his left leg and ought to have taken into consideration the permanent disability suffered by the petitioner and as spoken to by P.W.2, the doctor and ought to have granted Rs.1,50,000/- and since there is deviation in appreciation of evidence on record, meagre amount is granted as compensation and therefore sought to grant the amount as claimed with interest at 12% per annum.

11. Heard the learned counsel for the petitioner. It is his submission that the evidence of P.W.2 makes it clear that petitioner sustained 60% disability and Ex.A4 supports the evidence of P.W.2, who is a doctor who deposed about the partial disability of left leg and issuance of Ex.A4 certificate after examining the petitioner physically and subjecting the petitioner to various physical and functional exercises he found that the petitioner had shortening of left leg by half an inch, painful movements and painful weight bearing. P.W.2 deposed that the petitioner was aged about 17 years and is a student as on the date of

accident and the amount claimed by the petitioner ought to have been granted.

12. On behalf of third respondent no representation is made. First and second respondents were served. But none appears for them. In fact the second respondent is not a necessary party at all but some how, again the second respondent in the OP, is added as second respondent in the instant appeal without agitating any ground against it before the Tribunal.

13. Perused the order and the grounds urged by the petitioner. The finding recorded by the tribunal excluding the evidence of P.W.2 and disability certificate - Ex.A-4, cannot be faulted with in view of the categorical admission made by P.W.2 in his cross-examination that he has treated the petitioner and he was not specialised in orthopaedic and on 08.02.2001, petitioner came to him for the purpose of disability certificate and he has issued Ex.A4. He also makes a further admission that Ex.A6 produced before him pertains to Esa Khan and it does not relate to Irfan Khan, the petitioner. He has also stated that there is a Medical Board constituted at Government Headquarters Hospital at Nizamabad for the purpose of issuing medical disability certificates. He makes a positive admission that he was not the member of the Medical Board. Considering the percentage of disability mentioned in Ex.A4 and believing the evidence of P.W.4, the finding arrived at by the Tribunal cannot be faulted with. So what remains on record is that even shortening of half inch of left leg as stated by the petitioner would not stand. Thus, it is clear that the injury sustained by the petitioner to his left tibia is a grievous injury. Therefore, the amount of Rs.25,000/- granted by the Tribunal towards the injuries, construed as the amount granted towards first injury, which is rupture and for the other two simple injuries, a sum of Rs.6,000/- is granted at Rs.3,000/- each. Towards extra nourishment Rs.5,000/- is granted keeping in view, that the petitioner was a minor boy on the date of accident and thus the petitioner is totally entitled to Rs.41,000/- as against Rs.30,000/- granted by the Tribunal.

14. Thus, the claimant is entitled to a total compensation of Rs.41,000/- (Rupees forty one thousand only) as against Rs.30,000/-, awarded by the Tribunal, and the same is accordingly awarded. However, the claimant is

entitled to interest at 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others,** as against 9% per annum awarded by the Tribunal**.**

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the interest, as indicated above. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

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A. SHANKAR NARAYANA, J

February 12, 2015.

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